

Amendment No. 5 to SB0113

Johnson
Signature of Sponsor

AMEND Senate Bill No. 113

House Bill No. 130*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 5, Part 6, known as the Education Professional Negotiations Act, is amended by deleting the part in its entirety and by substituting instead the following language:

49-5-601. Short title—Statement of purpose.

(a) This part shall be known and may be cited as the “Advancement of Student Achievement Act”.

(b)

(1) Local boards of education and their professional employees have an obligation to the public to exert their full and continuing efforts to achieve the highest possible education standards. This requires establishment and maintenance of a professional climate and working environment that will attract and retain a highly qualified professional staff, foster open, collaborative relationships between boards of education and their professional employees based upon mutual respect, stimulate optimum performance by the staff, and encourage each and every professional employee to contribute the employee's best to the advancement of student achievement. In order to best achieve these ends, it is the purpose of this part to set forth and recognize the rights and obligations of boards of education and their professional employees, to establish procedures governing their respective roles and the important relationships between them, and to promote a professional climate in order to focus efforts on teaching and learning for all students of the public schools.

(2) Experience has shown that boards of education and their professional employees can best reach the objectives described in subdivision (b)(1), if each considers the ability, experience, and judgment of the other in formulating policies and making decisions that involve the operations of Tennessee's public schools through a collaborative, rather than confrontational, effort. It also has been shown that professional employees can perform at their best when goals and expectations as to the terms and conditions of professional service are set forth with clarity, reliability and fairness to all in a manner demonstrating concern and respect for the interests and opinions of the individual employee.

(3) It is the purpose and policy of this part to recognize the concerns of individual employees in their relations with boards of education and to recognize certain interests and responsibilities, but not obligations, of professional employees in forming, joining and assisting professional employees' organizations. Such interests and responsibilities include meeting, consulting and conferring with boards of education in good faith in order to formulate specific terms and conditions of professional service. Furthermore, in order to foster trust and mutual respect among the parties, and to provide an open and collaborative problem-solving approach to such, it is further the purpose and policy of this part to establish and adopt principles and techniques to be used in collaborative problem-solving pursuant to this part.

(c) A training program in the principles and techniques of collaborative problem-solving shall be developed by the Tennessee Organization of School Superintendents in conjunction with representative organizations of school leaders and administrators and professional employees' organizations by January 1, 2012, at which time a summary report of the training program and related materials, if any, shall be presented to the education committees of the senate and the house of representatives. Such training program shall be implemented, as appropriate, within each local education agency no later than July 1, 2012.

(d) Any and all bargaining being conducted pursuant to the Tennessee Education Professional Negotiations Act on the effective date of this act shall be suspended.

(e) No collaboration pursuant to this part shall be conducted by a local board of education until the training developed under this part has been implemented within the local education agency.

49-5-602. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Board of education" or "local board of education" has the same meaning as the term is defined in § 49-1-103;

(2) "Collaboration" means the process by which the chair of a board of education and the board's professional employees, or such representatives as either party or parties may designate, meet at reasonable times and in good faith confer, consult, discuss, exchange information, opinions, and proposals on matters within the scope of this part relating to the terms and conditions of professional employee service;

(3) "Management personnel" means those persons or organizations chosen by the board of education to represent it in the collaboration process;

(4) "Management team" means employees who devote a majority of their time to the system-wide area or areas of professional personnel management, fiscal affairs or general management and shall specifically include principals, assistant principals, supervisors and others whose principal responsibilities are administration rather than teaching;

(5) "Person" means one (1) or more individuals, organizations, associations, or their representatives;

(6) "Professional employee" means any person employed by any local board of education in a position that requires a license issued by the department of education for service in public elementary and secondary schools of this state, supported, in whole or in part, by local, state or federal funds, but shall not include any member of the

management team, as defined in this part, or a retired teacher who is employed as a teacher in accordance with title 8, chapter 36, part 8;

(7) "Professional employees' organization" means any organization with membership open to professional employees, as defined in subdivision (6), in which the professional employees participate and that exists for the purpose of promoting the professional status and growth of educators and the welfare of students;

(8) "Representative" includes any person, or group of persons, organization or association that is designated and authorized by the respective professional employees, professional employees' organizations, or local board of education to act for it under this part; and

(9) "Strike" means the failure with others to report for duty, the willful absence from one's position, the stoppage of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, and without the lawful approval of one's superior; or in any manner interfering with the operation of the public school system, for the purpose of inducing or coercing the recognition of any employee organization or a change in the conditions or compensation or the rights, privileges or obligations of employment;

(10) "Supervisor" means any professional employee of a local board of education whose full-time job responsibilities consists of oversight of other professional employees or curriculum development or both; and

(11) "Working conditions of professional employees" or "terms and conditions of professional service" means those fundamental matters that affect a professional employee financially or the employee's employment relationship with the board of education and that are specifically designated as such under this part. The term "working conditions" or "terms and conditions of professional service" is intended to be narrowly defined and does not include any matters not specifically designated under this part.

49-5-603. Rights of professional employees.

Professional employees have the right to form, join or be assisted by organizations, to participate in collaboration with boards of education through representatives of their own choosing and to engage in other concerted activities for the purpose of other mutual aid and benefit; provided, that professional employees also have the right to refrain from any or all such activities.

49-5-604. Rights preserved.

(a) Those rights and responsibilities of boards of education, directors of schools and professional employees as contained in this title are not statutorily modified or repealed by this part.

(b) This part shall not operate so as to annul, modify or preclude the continuation of any recognition heretofore entered into between a board of education and a professional employees' organization during the term of any existing contract or agreement. Upon the termination of any existing agreement, subsequent professional employee relationships between the respective board of education and its professional employees shall be governed by this part.

49-5-605. Representatives.

Experience has shown that efforts to confer, consult, discuss, and to exchange information, opinions, and proposals to provide crucial input on terms and conditions of professional service are most efficient and effective when conducted in an orderly manner by participants who were selected and authorized to represent individual professional employees or groups of employees. It is the policy and purpose of this part to ensure the rights of professional employees to participate in collaboration with boards of education individually and also through representatives of their own choosing. No professional employee, group of professional employees, or professional employee organization shall be denied the opportunity to represent themselves or groups of professional employees in discussions authorized under this part.

49-5-606. Unlawful acts.

(a) It is unlawful for a board of education or its management personnel to:

(1) Impose or threaten to impose reprisals on professional employees or discriminate against professional employees by reason of their exercise of rights guaranteed by this part;

(2) Interfere with, restrain or coerce employees in the exercise of the rights guaranteed in § 49-5-603;

(3) Refuse or fail to participate in good faith collaboration under this part;

(4) Refuse to permit any professional employees' organization to have access at reasonable times before or after the instructional day to areas in which professional employees work, to use institutional bulletin boards, mail boxes or other communication media or to use institutional facilities as permitted by a local board's policy or procedure for community use at reasonable times for the purpose of holding a meeting concerned with the exercise of the rights guaranteed by this part;

(5) Encourage or discourage membership in any organization by discrimination in hiring, granting of tenure or other terms or conditions of employment. The board of education or management personnel may express any views or opinions on the subject of employer-employee relations; provided, however, that such expression shall contain no threat of reprimand, discharge or promise of benefits;

(6) Discharge or discriminate against an employee because the employee has filed an affidavit, petition or complaint or given any information or testimony under this part;

(7) Dominate, interfere or assist in the administration of any professional employee organization;

(8) Refuse, upon request of professional employees, to permit the employees from having a representative from the employees' professional employees' organization or any individual of their choosing to represent the

professional employees in employment or other legal issues including, but not limited to, the filing of grievance complaints; or

(9) Refuse to permit a professional employees' organization from distributing information, setting up displays, or speaking at an in-service where one (1) or more professional employees' organizations have been invited to do so.

(b) It is unlawful for a professional employees' organization or its representatives to:

(1) Cause or attempt to cause a board of education to engage in conduct violative of this part; provided, that this subdivision (b)(1) shall not be construed to impair the right of professional employees' organizations to prescribe its own rules with respect to operation involving the acquisition or retention of membership;

(2) Refuse or fail to participate in good faith collaboration under this part with a board of education;

(3) Interfere with, restrain or coerce professional employees or a board of education in the exercise of rights granted in this part;

(4) Engage in a strike;

(5) Urge, coerce or encourage others to engage in unlawful acts as defined in this part;

(6) Enter onto the school grounds for the purpose of contacting professional employees in such a manner and at such times as will interfere with the normal operations of the school; or

(7) Coerce or attempt to intimidate professional employees who choose not to join a professional employee organization.

(c)

(1) A complaint of an unlawful act shall be filed with, or initiated by the board of education. If no reasonable resolution is reached between the parties, a

complaint may be filed in the chancery court of the county where the local education agency is located.

(2) No complaint shall issue based upon any unlawful act occurring more than three (3) months prior to the filing of the complaint.

(3) The court is empowered to prevent any board of education or its agents, or organizations, associations, professional employees, or their agents, from engaging in any unlawful act.

(4) If, upon the preponderance of the evidence taken, the court is of the opinion that a party named in the complaint has engaged in or is engaging in any such unlawful act, then the court shall state its findings of fact, issue an order requiring the party to cease and desist from the unlawful act, and take affirmative action to correct the unlawful act. The order may further require the party to make reports from time-to-time showing the extent to which it has complied with the order.

(5) If, upon the preponderance of the testimony taken, the court is not of the opinion that a party named in the complaint has engaged in or is engaging in any such unlawful act, then the court shall state its findings of fact and shall issue an order dismissing the complaint.

49-5-607. Strikes — Remedies.

(a)

(1) If a strike occurs, the board of education may apply to the chancery court in the county to enjoin the strike. The application shall set forth the facts constituting the strike.

(2) If the court finds, after a hearing, that a strike has occurred, the court shall enjoin the employees from participating in the strike.

(b) When local boards of education have determined which employees have engaged in or participated in a strike, the employees shall be subject to dismissal,

reprimand or reversion to any point in probationary status at the discretion of the local board of education.

(c) No penalty, forfeiture of rights or privileges or other sanction or fine imposed on a professional employees' organization, its officers or members, or professional employees as the result of a strike, shall be subject to collaboration by the board and its professional employees at any time.

49-5-608. Scope of collaboration.

(a) A local board of education shall be required to participate in collaboration with professional employees, or their various designated representatives, if any, with respect to only those terms and conditions of employment that are specified in this section; provided, however, that after such collaboration, the board shall have final authority for the specification of the terms and conditions. Such terms and conditions include and are limited to the following:

(1) Salaries or wages;

(2) Grievance procedures;

(3) Insurance;

(4) Fringe benefits, but not to include pensions or retirement programs of the Tennessee consolidated retirement system or locally authorized early retirement incentives;

(5) Working conditions as defined herein; except those working conditions which are prescribed by general law, private act or rules and regulations of the state board of education, the department of education or any other department or agency of state or local government;

(6) Leave; and

(7) Payroll deductions.

(b) No other terms or conditions of employment shall be the subject of collaboration between the board of education and the professional employees or their representatives and no collaboration shall be conducted on the following subjects:

(1) Differentiated pay plans and other incentive compensation programs including stipends and associated benefits that are based on professional employee performance that exceeds expectations, or that aid in hiring and retaining highly qualified teachers for hard to staff schools and subject areas;

(2) Expenditure of grants or awards from federal, state or local governments and foundations or other private organizations;

(3) Evaluation of professional employees pursuant to federal or state law or state board of education policy;

(4) Staffing decisions and state board of education or local board of education policies relating to innovative educational programs under § 49-1-207, innovative high school programs under title 49, chapter 15, virtual education programs under title 49, chapter 16 and other programs for innovative schools or school districts that may be enacted by the general assembly; and

(5) All personnel decisions concerning assignment of professional employees, including, but not limited to, filling of vacancies, assignments to specific schools, positions, professional duties, transfers within the system, layoffs, reductions in force, and recall.

(c) No employment policy adopted pursuant to this part shall include provisions that require personnel decisions to be determined on the basis of tenure, seniority or length of service.

(d) The director of schools shall be permitted to communicate with professional employees employed by the local board of education concerning any subject relevant to the operation of the school system, including the terms and conditions of professional service that are subject to collaboration, through any means, medium or format the director chooses.

49-5-609. Fiscal effect of collaboration.

Any items considered during the course of collaboration that require funding shall not be considered effective until such time as the body empowered to appropriate the

funds has approved a budget that includes sufficient funding. In the event the amount of funds appropriated is less than the amount required to address the matters of collaboration, the parties may continue to confer to implement such items to the extent possible within the amount of funds appropriated.

49-5-610. Professional employee manuals.

(a)

(1) Each local board of education shall develop and adopt a professional employee manual that contains the local board's procedures for establishing policies relative to the employment and working conditions of professional employees. The professional employee manual, once adopted, shall be binding on the local education agency until a new or renewed professional employee manual is adopted by the local board of education as provided in subdivision (a)(2).

(2) Except as provided in subdivision (a)(3), every three (3) years, or more frequently at the discretion of the local board of education, the professional employee manual shall be reviewed by the local board of education; revised, if deemed advisable, after receiving input from professional employees, individually or through representatives, and the general public as provided in subdivisions (c)(2) through (4); and adopted.

(3) If a judicial decision or change in statutory or regulatory law necessitates that a local board of education modify or rescind a provision of the professional employee manual, then the local board of education is not required to comply with subdivisions (c)(2) through (4) in making such modification or rescission.

(b)

(1) The subjects addressed in the professional employee manual shall include, but not be limited to, the local board's procedures for establishing

policies relative to the terms and conditions of employment listed in § 49-5-608(a).

(2) The procedures for establishing policies shall include, but not be limited to, providing notice of the local board's intent to consider or establish a policy to professional employees, parents, other education stakeholders, and the general public at least fifteen (15) calendar days prior to the scheduled meeting relative to the policy. The notice shall include a description of the policy to be considered or established.

(3) The professional employee manual shall be in accordance with all applicable mandatory federal, state, and local laws, policies, and guidelines and shall incorporate citations to, or the text of, federal, state, and local laws, policies, and guidelines governing, or relevant to, the subjects enumerated in subdivision (b)(1).

(c) A professional employee manual shall be developed and adopted by a local board of education as provided in this subsection (c).

(1)

(A)

(i) No later than January 1, 2012, TOSS, in consultation with each interested professional employees' organization and the Tennessee School Boards Association, shall develop and publish a model professional employee manual to aid local boards of education in the development of their professional employee manuals. TOSS may include annotations and suggested alternatives to provide guidance in those areas where a local board of education has discretion.

(ii) In developing the model professional employee manual, TOSS shall conduct a comprehensive review of contracts, agreements or policies governing terms and conditions of

professional service entered into by local boards of education and recognized professional employees' organizations under the Education Professional Negotiations Act that are in effect on the effective date of this act as well as the terms and conditions of employment of those professional employees of boards of education that did not collectively bargain under the Education Professional Negotiations Act prior to the effective date of this act. TOSS shall incorporate in the model manual those provisions addressing procedures for establishing local board of education policies identified as appearing in a majority of such contracts, agreements or policies.

(iii) TOSS shall maintain and continue to revise the model professional employee manual when necessary to harmonize the model manual with applicable law and best practices; provided, that the state board of education shall notify each local board of education when the model manual is revised.

(B) Every local board of education shall develop and adopt, as provided in subdivisions (c)(2) through (4), an initial professional employee manual no later than April 17, 2012. Nothing in this section shall prohibit a local board of education from meeting and conferring with professional employees or their representatives, or both, to develop the initial professional employee manual.

(C)

(i) The initial professional employee manual shall take effect July 1, 2012; provided, however, that any contract or agreement governing terms and conditions of professional service entered into by a board of education and a recognized professional employees' organization under the Education

Professional Negotiations Act prior to the effective date of this act shall remain in effect until its expiration, at which time the professional employee manual adopted by the local board of education shall take effect.

(ii) If any such contract or agreement expires prior to July 1, 2012, then the teachers employed by such board of education shall retain the rights in their employment that are afforded to them under federal, state, and local law as well as applicable local board of education policies.

(2) A local board of education shall promulgate a professional employee manual taking into consideration input received from professional employees, parents, other education stakeholders, and otherwise interested members of the general public. Any proposed manual shall be posted for review on the web site of the local board of education. If a local board of education does not have a web site, then the local board shall, instead of posting a professional employee manual on its web site, make available at least two (2) copies of the proposed and adopted professional employee manual in each school library within the jurisdiction of the local education agency.

(3)

(A) Professional employees employed by, and retired professional employees formerly employed by the local education agency shall be provided a forty-five (45) calendar day period to submit written input to the local board of education relative to the proposed professional employee manual. No professional employee, retired professional employee, or professional employees' organization shall be denied the opportunity to submit input for consideration by the local board of education. If the proposed professional employee manual is revised by the local board of education in response to the input the board receives pursuant to this

subdivision (c)(3)(A), then the revisions shall be made available for review as provided in subdivision (c)(2).

(B) The local board of education shall conduct at least one (1) public hearing, in accordance with title 8, chapter 44, part 1, after the period for input provided in subdivision (c)(3)(A) has ended. If revisions are made to the proposed professional employee manual, then no public hearing relative to the proposed manual shall be held earlier than seven (7) calendar days from the date the proposed manual is made available for review. Any public hearing held relative to the proposed professional employee manual shall be held at a location and time reasonably calculated to afford professional employees, parents, other education stakeholders, and otherwise interested members of the general public the opportunity to provide input relative to the proposed professional employee manual.

(4) The adopted manual shall be made publicly available as provided in subdivision (c)(2). If requested, the local board of education shall make available a copy of the adopted professional employee manual to the commissioner of education upon seven (7) calendar days' notice.

SECTION 2. Tennessee Code Annotated, Section 49-5-510, is amended by deleting the language "and any locally negotiated agreement".

SECTION 3. Tennessee Code Annotated, Section 49-5-511(b)(3), is amended by deleting the language "and any locally negotiated agreement".

SECTION 4. Nothing in this act shall be construed to abridge or impair a contract or agreement governing terms and conditions of professional service entered into by a board of education and a recognized professional employees' organization under the Education Professional Negotiations Act before the effective date of this act. Any such contract or agreement shall remain in full force and effect until the expiration of the contract or agreement;

provided that no such contract or agreement may be extended or renewed beyond its date of expiration.

SECTION 5. Tennessee Code Annotated, Section 5-23-107(1), is amended by deleting the language "or negotiated agreement pursuant to title 49, chapter 5, part 6" and by substituting instead the language "or professional employee manual adopted pursuant to § 49-5-610".

SECTION 6. Tennessee Code Annotated, Section 49-1-201(d)(2), is amended by deleting the subdivision in its entirety.

SECTION 7. Tennessee Code Annotated, Section 49-1-207(g), is amended by deleting the subsection in its entirety.

SECTION 8. Tennessee Code Annotated, Section 49-1-614(d)(2), is amended by deleting the language ", and the Education Professional Negotiations Act, compiled in chapter 5, part 6 of this title,".

SECTION 9. Tennessee Code Annotated, Section 49-2-203(a), is amended by deleting subdivision (6) in its entirety and by substituting instead the following:

(6) Except as otherwise provided in this title, establish policies relative to the dismissal of teachers, principals, supervisors and other employees by the director of schools upon sufficient proof of improper conduct, inefficient service or neglect of duty; provided, that no one shall be dismissed without first having been given in writing due notice of the charge or charges and an opportunity for defense;

SECTION 10. Tennessee Code Annotated, Section 49-2-203(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Develop and adopt a professional employee manual as provided in § 49-5-610; provided, however, that no local education board shall, through the development and adoption of the professional employee manual act to adversely affect an individual professional employee or group of professional employees for purposes unrelated to the duties and powers of the local board of education.

SECTION 11. Tennessee Code Annotated, Section 49-2-301(b)(1)(EE), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(EE) Within the approved budget and consistent with existing state laws and board policies, employ, transfer, suspend, non-renew and dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1) and in chapter 5, part 5 of this title.

SECTION 12. Tennessee Code Annotated, Section 49-3-306(h), is amended by deleting the language "and in compliance with § 49-5-611".

SECTION 13. Tennessee Code Annotated, Section 49-13-118, is amended by deleting the section in its entirety.

SECTION 14. Because title 49, chapter 5, part 6, shall continue to be applicable to contracts or agreements governing terms and conditions of professional service that were negotiated and entered into by a board of education and a recognized professional employees' organization before the effective date of this act, the code commission is requested to place the Education Professional Negotiations Act together with an appropriate statement indicating its applicability in an appendix to title 49 for the sole purpose of providing a readily available reference for those affected by such contracts or agreements until the time that all contracts or agreements negotiated under the act have expired.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect upon becoming a law, the public welfare requiring it.